

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

LUPERCAL LLC,

Plaintiff

v.

COMERICA BANK,

Defendant

Case No. 6:19-cv-00402

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Lupercal LLC (“Lupercal” or “Plaintiff”) files this Complaint for patent infringement against Defendant Comerica Bank (“Comerica” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Lupercal is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Defendant, Comerica, is a Texas company having a principal place of business in this judicial district at 300 W 6th Street, Suite 2250, Austin, Texas 78701.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400 because Defendants have committed acts of infringement and have regular and established places of business in this judicial district.

COUNT I
(Infringement of U.S. Patent No. 9,386,094)

7. Lupercal incorporates paragraphs 1 through 6 as though fully set forth herein.


8. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,386,094 (the “’094 Patent”), entitled SYSTEM AND METHOD FOR MEDIA SUBMISSION, which issued on July 5, 2016. A copy of the ’094 Patent is attached as Exhibit A.

9. The ’094 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

10. Defendant provides the Comerica Mobile Banking App for use with Apple iOS devices and Android devices, which is available for download from Apple’s iTunes App Store and Google Play Apps:

App Store Preview

This app is only available on the App Store for iOS devices.



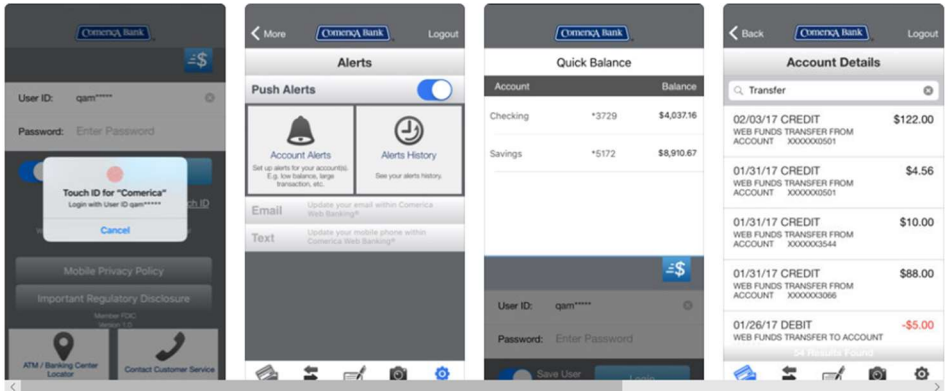
Comerica Mobile Banking® 4+

Comerica Bank

★★★★★ 2.6, 252 Ratings

Free


iPhone Screenshots



2 Comerica Click&Capture Deposit® is available to customers that have both Comerica Web Banking® and Comerica Mobile Banking®. Deposits are subject to verification and not available for immediate withdrawal. Please keep your mobile deposited paper check(s) in a safe place until the funds are posted to your account, then securely destroy them. Regular deposit fees may apply, see your Account Fee brochure for fee information. Deposit limits and other restrictions may apply per deposit. For additional details and deposit limit amounts, please refer to the Comerica Mobile Banking Terms and Conditions. To view the Comerica Mobile Banking Terms and Conditions, log into Comerica Web Banking and click on the Self Service tab. Standard message and data rates may apply. Check with your mobile service provider for details on specific fees and charges.

Comerica Mobile App is available for Apple® iPhone® and iPad®. Apple iPhone and iPad are registered trademarks of Apple, Inc. Comerica is not endorsed, sponsored, affiliated with or otherwise authorized by Apple, Inc.

<https://apps.apple.com/us/app/comerica-mobile-banking/id403598968>



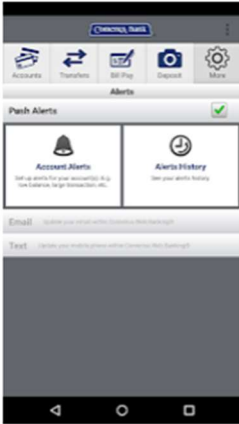
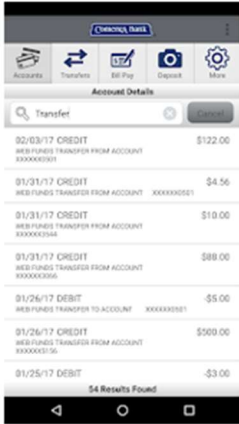
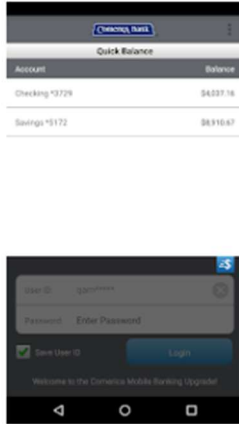
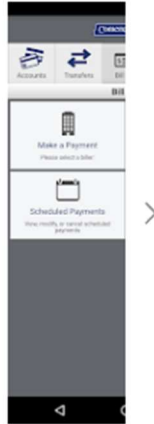
Comerica Mobile Banking®

Comerica Bank Finance ★★★★★ 2,119

Everyone

✕ This app is incompatible with all of your devices.

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Stay on top of your finances, while keeping up with your busy schedule with Comerica Mobile Banking®.

Comerica Mobile Banking lets you control where and when you bank. (1)

2 Comerica Click&Capture Deposit® is available to customers that have both Comerica Web Banking® and Comerica Mobile Banking®. Deposits are subject to verification and not available for immediate withdrawal. Please keep your mobile deposited paper check(s) in a safe place until the funds are posted to your account, then securely destroy them. Regular deposit fees may apply, see your Account Fee brochure for fee information. Deposit limits and other restrictions may apply per deposit. For additional details and deposit limit amounts, please refer to the Comerica Mobile Banking Terms and Conditions. To view the Comerica Mobile Banking Terms and Conditions, log into Comerica Web Banking and click on the Self Service tab. Standard message and data rates may apply. Check with your mobile service provider for details on specific fees and charges.

Comerica Mobile App is available for Android(TM). Android is a trademark of Google, Inc. Comerica is not endorsed, sponsored, affiliated with or otherwise authorized by Google, Inc.

https://play.google.com/store/apps/details?id=com.comerica.mobilebanking&hl=en_US

11. When using the app to deposit a check, the app takes a photo of the front and back of the check. If the photo is not adequate, the app allows the user to retake a photo of the front and back.

Click&Capture Deposit®

Take a picture of both sides of your endorsed check using your device and deposit it into your Comerica account.⁵ No more deposit slips or trips to the bank. It's fast, safe and easy!

1. Open the Comerica Mobile App and login
2. At the bottom of the app, click on the Deposit icon and then select new deposit
3. Select an account to deposit your check and the amount
4. Sign the back of your check and write **"For Mobile Deposit at Comerica Bank Only"** below your signature. (Or, if available, check the box on the back of your check that reads: "Check here if mobile deposit".)
5. Take a picture of both sides of your endorsed check with your smartphone or iPad
6. Verify your deposit, click submit and you'll receive a confirmation that your check has been deposited
7. Once you receive confirmation that your check has been deposited, write **"Deposited via Click&Capture Deposit"** along with the date of the deposit on the front of your check. When you see the full check amount deposited into your account, please retain your check for ten (10) additional calendar days. Afterwards, securely destroy the check by shredding it. See sample below.

YOUR NAME
678 Main Street
Anywhere, MI 12345

123

DATE

PAY TO THE ORDER OF \$

DOLLARS

123456789 123456789 123

Routing Number Account Number Check Number

<https://www.comerica.com/personal-finance/banking/online-services/mobile-banking.html>

12. In the process of depositing a check with the mobile app, the user enters the amount of the check deposit and selects the account to deposit the funds.

13. On information and belief, upon being accepted by the user (via the Comerica Mobile Banking Application), the application pre-processes the front and back images to produce and front and back pre-processed images that is controlled by one or more preprocessing parameters received from a device (e.g., a server used to download the Comerica Mobile App) separate from the user device (user's smart phone) in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

14. Defendant controls the operation and use of the Comerica Mobile App and encourages its customers to use the Comerica Mobile App to deposit checks to the customer's accounts with Defendant. The Defendant's Comerica Mobile App is the Accused Instrumentality through which Defendant and its customers infringe the '094 Patent.

15. At least by developing, distributing, operating, promoting, and encouraging the use of the Comerica Mobile App, Defendant encourages its customers to use the Comerica Mobile App to practice the claimed methods, which Defendant controls the use of and derives a direct benefit and profit from.

16. Upon information and belief, Defendant has infringed and continues to infringe one or more claims, including Claim 42, of the '094 Patent by developing, distributing, operating, promoting, and encouraging the use of the Comerica Mobile App in the United States without authority. Defendant has infringed and continues to infringe the '094 Patent either directly or through the acts of inducement in violation of 35 U.S.C. § 271.

17. Defendant has been on notice of the '094 Patent at least as early as January 16, 2019 when it received a notice letter from Plaintiff, which included a claim chart comparing the '094 Patent claims to the Comerica Mobile App.

18. Claim 42 recites:

42. A computer implemented method performed by an image submission tool on a user device, comprising:

causing the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images;

causing the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images;

causing the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a conversion of the one or more images or the one or more replacement images as specified for use by a receiving party;

causing the image submission tool to enable a user to submit the
one or more pre-processed images; and
causing the image submission tool to transmit the one or more pre-processed images.

19. The Comerica Mobile App enables account holders to deposit checks electronically by taking a photo of the front and back of the check. After selecting an account to deposit the check to, the user enters the amount of the check.

20. More particularly, the Comerica Mobile App is a computer implemented method performed by an image submission tool on a user device.

21. In the process of using the Comerica Mobile App, the computer implemented method causes the image submission tool to generate a visual representation of one or more images, the visual representation enabling a user to determine whether the one or more images should be replaced with one or more replacement images.

22. In the process of using the Comerica Mobile App, the computer implemented method causes the image submission tool to enable a user to enter text information for association with the one or more images or the one or more replacement images.

23. In the process of using the Comerica Mobile App, the computer implemented method causes the image submission tool to pre-process the one or more images or the one or more replacement images to produce one or more pre-processed images, the pre-processing by the image submission tool controlled by one or more pre-processing parameters received from a device separate from the user device in a

conversion of the one or more images or the one or more replacement images as specified for use by a receiving party.

24. In the process of using the Comerica Mobile App, the computer implemented method causes the image submission tool to enable a user to submit the one or more pre-processed images.

25. In the process of using the Comerica Mobile App, the computer implemented method causes the image submission tool to transmit the one or more pre-processed images.

26. Lupercal has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '094 Patent;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '094 Patent;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: July 2, 2019

Respectfully submitted,

/s/ Raymond W. Mort, III

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